

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

)  
Amendment of the Commission's Rules to )  
Establish Part 27, the Wireless )  
Communications Service ("WCS") )

GN Docket No. 96-228

**REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its reply comments with respect to the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1/</sup> Although specific proposals vary, AT&T notes near unanimous agreement among the commenters that WCS licenses should be issued in blocks no larger than 10 MHz and sized on the basis of major trading areas ("MTAs"). Several commenters also agree with AT&T's suggestion that the congressional mandate to accommodate the needs of the public safety community be satisfied by reserving one 10 MHz block of WCS spectrum in each geographic area for public safety services.

**I. LICENSES SHOULD BE ISSUED IN BLOCKS NO LARGER THAN 10 MHZ AND IN GEOGRAPHIC AREAS NO LARGER THAN MAJOR TRADING AREAS**

Most commenters agree that the Commission's and Congress's goals, including broad participation in the auction, the development of innovative services, and a speedy licensing process, would be served best by making WCS spectrum available in relatively small blocks

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<sup>1/</sup> In the Matter of Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket No. 96-228, Notice of Proposed Rulemaking, FCC 96-441 (rel. Nov. 12, 1996) ("Notice").

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and issued according to moderately-sized license areas. Accordingly, all but two parties propose the distribution of licenses on an MTA or smaller basis.<sup>2/</sup> In addition, many parties believe that WCS licenses should be allocated in blocks equal to or smaller than 10 MHz (5 MHz pairs).<sup>3/</sup> These commenters, which represent diverse segments of the telecommunications industry, note that such an allocation would support a vast array of services, including commercial mobile radio services ("CMRS"), satellite digital audio radio service ("DARS"), packet data, and Internet access.

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<sup>2/</sup> See Comments of ADC Telecommunications, Inc. at 5, 20 ("ADC Comments"); Comments of the Markle Foundation at 8-11 ("Markle Foundation Comments"). ADC Telecommunications, Inc. ("ADC") only advocates nationwide licenses for any spectrum reserved solely for satellite DARS. ADC Comments at 5, 20. ADC recommends issuing other licenses on a BTA basis. *Id.* at 17-22.

<sup>3/</sup> See, e.g., Comments of AirTouch Communications, Inc. at 5-9 (5-MHz blocks on an MTA or Economic Area basis); Comments of ALLTEL Mobile Communications, Inc. at 3-4 (5 MHz blocks on an MTA basis); Comments of Bell Atlantic NYNEX Mobile, Inc. at 3-8 (small blocks on an MTA or BTA basis); Comments of Bell Communications Research, Inc. at 2 (10 MHz blocks in 5 MHz pairs); Comments of BellSouth Corporation at 6-11 (four 6 MHz blocks and two 3 MHz blocks, all paired, on a BTA basis); Comments of the Cellular Telecommunications Industry Association at 12-14 (blocks no greater than 10 MHz, on an MTA or BTA basis); Comments of Digital Satellite Broadcasting Corporation at 6-10 (5 MHz blocks on an MTA basis); Comments of Digivox Corporation at 3-7 (10 MHz blocks, 5 MHz pairs, on an MTA basis); Comments of Florida Cellular RSA Limited Partnership at 2 (MTAs); Comments of GTE at 3-6 (10 MHz blocks on a BTA basis); Comments of Multipoint Networks at 2 (5 MHz blocks); Comments of Omnipoint Corporation at 1-7 (Five blocks of 1 MHz, 2 MHz, 3 MHz, 4 MHz and 5 MHz, unpaired, on a BTA basis); Comments of Pacific Telesis Group at 1-4 (MTAs); Comments of the Personal Communications Industry Association at 9-10, 12-20 (10 MHz blocks, 5 MHz pairs, on an MTA basis); Comments of Pocket Communications, Inc. at 2-4 (10 MHz blocks on a BTA basis); Comments of PrimeCo Personal Communications, L.P. at 9-13 (5 MHz blocks on an MTA basis); Comments of Puerto Rico Telephone Company at 3-5 (10 MHz blocks on an MTA basis); Comments of SBC Communications Inc. at 4-7 (10 MHz blocks on an MTA or BTA basis); Joint Comments of Sprint Spectrum L.P. d/b/a/ Sprint PCS and Sprint Corporation at 5-8 (5 MHz blocks on a BTA basis); Comments of Telephone and Data Systems, Inc. at 1-6 (BTAs); Comments of UTC at 3-6 (two 5 MHz and two 10 MHz blocks of paired spectrum on an Economic Area basis).

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Assigning spectrum on an MTA basis would encourage diverse participation in the auction and the provision of wireless services. In contrast, as Bell Atlantic NYNEX Mobile, Inc. ("BANM") states, establishing regional or nationwide service areas would "sharply limit the number of licenses available for competitive bidding and the number of entities which would be awarded licenses."<sup>4/</sup> This in turn would undermine the congressional objectives of encouraging participation by small and minority-owned businesses and recovering for the public a portion of the value of the spectrum.<sup>5/</sup>

Similarly, allocation of smaller spectrum blocks is the best way to promote the development of innovative services and the entry of new providers.<sup>6/</sup> As Digital Satellite Broadcasting Corporation points out, the lack of a prescribed use for WCS licenses makes it particularly important that they be made available "in the smallest possible spectrum and geographic blocks," so that the intended flexibility will be maintained.<sup>7/</sup> Moreover, as CTIA notes:

[I]t is more efficient to allocate small licenses and build to the needed level than it is to require, as a condition of entry, the accumulation of unmanageably large licenses requiring subsequent disaggregation. A decision that risks

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<sup>4/</sup> Comments of Bell Atlantic NYNEX Mobile, Inc. at 6-7 ("BANM Comments").

<sup>5/</sup> 47 U.S.C. § 309(j).

<sup>6/</sup> See, e.g., Comments of BellSouth Corporation at 8-11; Comments of the Cellular Telecommunications Industry Association at 12-14; Comments of Digital Satellite Broadcasting Corporation at 6-10 ("Digital Satellite Broadcasting Comments").

<sup>7/</sup> Digital Satellite Broadcasting Comments at 8.

"underassigning" spectrum is more readily cured in the marketplace than is the converse.<sup>8/</sup>

The Commission should reject the Markle Foundation's ("Markle") proposal to allocate just one nationwide, 30 MHz license. Adoption of this approach would so advantage the winning bidder and so disadvantage other providers that it would entirely undermine Congress's pro-competitive objectives.<sup>9/</sup> Not only would a nationwide allocation make it extremely difficult for existing CMRS providers to compete, it would prohibit the entry of new carriers and the establishment of new diverse services on this band.<sup>10/</sup> Moreover, creating nationwide service areas would decrease auction competition because, as AirTouch explains, "[e]ntities desiring to acquire WCS spectrum as complementary to existing networks or for new niche applications will not bid for nationwide licenses."<sup>11/</sup> It would also discourage the participation of companies that wish to acquire spectrum to test the viability of innovative ideas.<sup>12/</sup>

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<sup>8/</sup> CTIA Comments at 12. In addition, the proposed WCS partitioning and disaggregation rules would allow licensees to acquire additional spectrum and service area in only the increments they desire. Cf. Public Notice, "FCC Modifies Rules to Permit Partitioning and Disaggregation by Broadband PCS Licensees" (Dec. 13, 1996).

<sup>9/</sup> See Markle Foundation Comments at 8-11; see also ADC Comments at 5, 20 (any WCS spectrum licensed solely for satellite DARS should be issued on a nationwide basis; spectrum available for other uses should be issued according to BTAs).

<sup>10/</sup> Markle's suggestion that non-winners in the auction could be accommodated through spectrum disaggregation and geographic partitioning misses the point. See Markle Foundation Comments at 11. While these mechanisms would provide a method for entry by smaller entities, granting one company a nationwide broadband license and allowing it to determine who will be its competitors is inherently anticompetitive.

<sup>11/</sup> Comments of AirTouch Communications, Inc. at 7 ("AirTouch Comments").

<sup>12/</sup> Id.

## **II. AT&T'S PUBLIC SAFETY PROPOSAL IS AN APPROPRIATE ACCOMMODATION OF PUBLIC SAFETY NEEDS UTILIZING WCS SPECTRUM**

Although the proposals vary widely, many commenters recognize the need to accommodate meaningfully the needs of public safety entities in allocating WCS spectrum. AirTouch, for example, agrees with AT&T that a portion of the band should be set aside for public safety uses. In this regard, AirTouch suggests that "services offered on one or two of the [5 MHz] licenses should be limited to public safety services and could be used as dedicated data or video channels . . . ." <sup>13/</sup> As AT&T noted, this approach satisfies both the requirement that the spectrum be auctioned and the requirement that the needs of the public safety community be considered. <sup>14/</sup>

The Commission's proposed liberal partitioning and disaggregation rules, combined with the lack of limits on uses of WCS spectrum, would ensure that designated WCS spectrum would be put to its most efficient use from the standpoint of the public safety community. Any party bidding on the reserved public safety block would be able to take into account its ability to sell portions of the spectrum or limited geographic areas to public safety entities. In addition, the availability of post-auction spectrum in any shape or size should help alleviate the concerns of the public safety agencies that they will be unable to compete in the competitive bidding process. <sup>15/</sup> Moreover, under the Commission's recent

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<sup>13/</sup> Comments of AirTouch Communications, Inc. at 10.

<sup>14/</sup> Comments of AT&T Wireless Services, Inc. at 10.

<sup>15/</sup> Cf. Public Notice, "FCC Modifies Rules to Permit Partitioning and Disaggregation by Broadband PCS Licensees" (Dec. 13, 1996) (permitting partitioning and disaggregation by broadband PCS licensees in any service area defined by the parties and without regard to how much spectrum is retained by the disaggregator).

rule modification to allow geographic partitioning and spectrum disaggregation for all broadband PCS licensees, public safety entities can obtain PCS spectrum for their wireless communications uses and continue to use dedicated spectrum from the 2.3 GHz band for other public safety services.<sup>16/</sup>

Pocket Communications, Inc., PrimeCo Personal Communications, L.P., and Sprint each propose that the Commission grant, without auction, part of the WCS spectrum directly to public safety users.<sup>17/</sup> While the Commission's authority to forgo an auction is unclear, this might be the most efficient way to provide needed spectrum to public safety entities. Thus, if the Commission determines that it has the requisite statutory authority, it should directly set aside one 10 MHz block of WCS spectrum for public safety needs.<sup>18/</sup>

Finally, as noted by BANM, the Commission should take this opportunity to satisfy some of the public safety community's communications needs, rather than rely on unsatisfactory and disruptive fixes, such as the proposed "Cellular Priority Access System."<sup>19/</sup> Reserving a portion of the WCS band for services, such as 911 and

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<sup>16/</sup> Cf. Comments of APCO at 4 ("APCO Comments") (suggesting that WCS spectrum would be useful for "public safety airborne and 'mobile' video operations in the field," as well as "[c]ertain other fixed and temporarily fixed public safety operations . . .").

<sup>17/</sup> Comments of Pocket Communications, Inc. at 4-6; Comments of PrimeCo Personal Communications, L.P. at 13-14; Joint Comments of Sprint Spectrum L.P. d/b/a/ Sprint PCS and Sprint Corporation at 10-11 (if frequencies are appropriate for public safety uses).

<sup>18/</sup> These proposals would better alleviate APCO's concern that "[t]he vast majority of the public safety spectrum needs identified by PSWAC are for mission-critical and other communications that will need to be provided through systems owned and operated by public safety agencies." APCO Comments at 5.

<sup>19/</sup> BANM Comments at 10.

communications among disaster response personnel, would be considerably more efficient than promulgating a priority queuing system for public safety purposes.

### CONCLUSION

For the foregoing reasons, and the reasons stated in AT&T's Comments, the Commission should auction WCS licenses in 10 MHz blocks (5 MHz pairs) on an MTA basis, and should designate one of the blocks in each MTA for public safety purposes. In addition, the Commission should eliminate the buildout requirements and not subject WCS spectrum to the CMRS spectrum cap.

Respectfully submitted,

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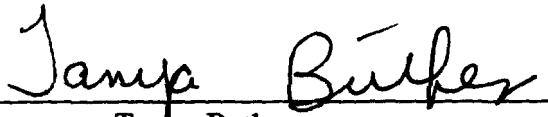
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December 16, 1996

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